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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 24, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, D.C. 20554

Re: **PETROLEUM COMMUNICATIONS, INC.**
Ex Parte Presentation
Gulf of Mexico Cellular Rule Making Proceeding
WT Docket 97-112; CC Docket 90-6

Dear Ms. Salas:

On September 21, 2001, Richard S. Myers and Jay N. Lazrus of Myers Lazrus Technology Law Group, on behalf of Petroleum Communications, Inc. ("PetroCom"), made an oral ex parte presentation to David Furth, Senior Legal Advisor in the Commission's Wireless Telecommunications Bureau, and Linda Chang and Michael Ferrante, also of the Bureau, regarding the referenced proceeding. A summary follows.

Section 22.911(a) of the Commission's rules defines a cellular carrier's protected Cellular Geographic Service Area (CGSA) by actual Service Area Boundaries (SABs) as calculated by a formula contained in the rule. After the Court of Appeals instructed the Commission in 1994 to vacate this rule insofar as it applied to GMSA licensees, the Commission adopted a note to Section 22.911(a) stating that the CGSAs of such licensees were those authorized prior to January 11, 1993. As of that date, a GMSA licensee's CGSA boundary was co-terminous with the GMSA boundary, the coastline. Further, with the vacating of Section 22.911(a) as applied to Gulf carriers, their SABs are defined by 39 dbu contours, not by the Section 22.911(a)(2) formula that generates 28 dbu contours. This has been the "status quo" for the last seven years.

The Commission should adopt a rule permitting GMSA licensees to have the same 32 dbu signal strength at the coastline that is permitted for land carriers. First, the 28 dbu formula was contained in the rule that defined a Gulf carrier's CGSA by actual SABs. This was the "move it you lose it" rule vacated by the Court of Appeals in 1994. If the Commission correctly decides not to adopt a "move it you lose it" rule, the reason for the 28 dbu formula -- to define the CGSAs of GMSA licensees in terms of enlarged SABs in a water environment -- goes away, and so should the formula. Second, equal signal strength at cellular boundaries is of central importance to the relationship between adjacent licensees. It creates an even playing field for negotiating extension and co-location agreements. PetroCom and A-side land carriers have relied on the principle of equal signal strength. An extension agreement reached last year with U.S. Cellular, for example, gives both parties the ability to extend 32 dbu contours (copy attached). A negotiation for an agreement under rules that permit one carrier to have a 32 dbu contour at the boundary, but the adjacent carrier only a 28 dbu

contour, puts the latter carrier at an obvious disadvantage. Third, the extensive record analysis performed in this rule making provides no reason for adopting a 28 dbu contour rule. The same 32 dbu signal strength thus should be the rule for both land and Gulf carriers, the first point of the PetroCom/U.S. Cellular joint proposal.¹

Section 22.912(a) prohibits a licensee from extending an SAB contour into the CGSA of an adjacent licensee without consent, even on a de minimis basis. Under current rules, the CGSA of a land carrier is defined by SABs, while that of a GMSA licensee is defined by the coastline. In the Second Further NPRM in this proceeding, the Commission proposed bifurcating the GMSA into a Coastal Zone and Exclusive Zone, tentatively concluding to change the status quo to permit non consensual de minimis extensions into “unserved areas” of the Exclusive Zone. Second Further NPRM at ¶50.

Two interrelated issues are: (1) whether Gulf and land carriers should be permitted to have the same 32 dbu signal strength at the CGSA boundary (currently the coastline), or unequal signal strengths; and (2) whether Section 22.912 should be changed to permit land carriers to have non-consensual de minimis extensions into non-covered areas of a GMSA licensee’s CGSA. Because of the impact on the two small Gulf carriers, the Commission’s Final Regulatory Flexibility Analysis must state the factual, policy and legal reasons for selecting the alternative adopted in the final rule and rejecting the alternatives. As shown below, *the best alternative is to adopt a 32 dbu equal signal strength rule with no change to the de minimis extension rule.*

Best alternative: 32 dbu formula for both sides; no change to de minimis extension rule.

Following the same 32 dbu rule that has been applied to land-based systems best ensures seamless coverage along the Gulf coastline and service to the public without capture of the adjacent carrier’s subscribers or roaming traffic, the overarching goals in this proceeding. Neither side should have a practical advantage in terms of having a stronger signal strength or the ability to extend over boundary into the neighboring CGSA without the other carrier’s consent. Having an equal signal strength rule with no change to the de minimis extension rule will maximize the incentives for reaching extension and co-location agreements in the Gulf while maintaining the seamless coverage along the Gulf coastline that is the status quo today. It is the best alternative that the Commission can adopt to comply with the Regulatory Flexibility Act.

Second alternative: 28 dbu formula for Gulf carriers; no change to de minimis extension rule.

Changing the status quo rule from a 39 dbu to a 28 dbu contour for GMSA licensees will adversely affect the two small Gulf carriers. A 28 dbu formula will create potential pull-back scenarios for Gulf sites engineered with 39 dbu or 32 dbu contours. Such pull-backs will decrease Gulf carrier coverage and revenues. Grandfathering such sites raises issues of which sites are eligible for grandfathering and whether grandfathering survives site modifications. Gulf carriers will be adversely impacted by having to protect grandfathered sites, incurring engineering and regulatory compliance costs to avoid modifications in which grandfathering is lost. More importantly, an unequal signal strength rule (32 dbu for land carriers and 28 dbu for Gulf carriers) will reduce incentives for land carriers to co-locate with Gulf carriers. Such a rule can give land carriers the ability to extend service across the boundary without the Gulf carrier’s consent, capturing Gulf cellular traffic and making it difficult for Gulf carriers to serve customers near the edge of their CGSAs. This alternative, like the third and fourth alternatives described below, will negatively impact the status quo.

¹In essence, the PetroCom/US Cellular joint proposal follows the same status quo rules used for land-based systems, except there is no “move it you lose it” rule for Gulf carriers.

Third alternative: 28 dbu formula for Gulf carriers; a change to the de minimis extension rule.


Changing the de minimis extension rule to permit non-consensual extensions into non-covered portions of the Gulf carrier's CGSA will reduce a land carrier's incentive to co-locate even more. Land carriers will see opportunities to engineer de minimis extensions in gaps between the coastline and the protected contour of a Gulf carrier's nearest water-based site. Such gaps could arise in a variety of ways, such as with termination and non-renewal of existing co-location agreements, required pull-backs by a Gulf carrier if a 28 dbu rule is adopted, and where grandfathering is not available to the Gulf carrier (e.g., in the case of a new or modified site). Land carriers may not be concerned with remaining gaps in coverage beyond the coastline as long as they can serve land customers without intruding into the Gulf carrier's actual SAB contour, thereby avoiding having to gain its consent. This alternative thus reduces incentives for co-location agreements and increases the likelihood for coverage gaps. It does not best serve the agency's goals and adversely impacts Gulf carriers.

Fourth alternative: 32 dbu formula for Gulf carriers; a change to the de minimis extension rule.

This is the worst alternative because it most strongly undermines co-location agreements, as illustrated by the attached diagrams of 32 dbu contours of actual sites serving the Gulf. The current Section 22.912(a), by prohibiting all non consensual extensions (de minimis and non de minimis alike) of a land carrier's SAB contour into the Gulf carrier's existing CGSA (including non-covered portions thereof) creates incentives to co-locate (diagram 1). However, without the need for consent, land carriers in specific instances will have little or no need to co-locate. The termination and non-renewal of co-location agreements will create a significant gap between the coastline and the nearest water-based contours of a Gulf carrier (diagram 2). In this gap the land carrier can have a non consensual "de minimis" extension of the contour at the former co-located site or a site nearby. PetroCom has determined that several of its co-located sites may be vulnerable to termination and non-renewal in this case if a land carrier attempts to re-engineer a co-located land site to extend its SAB across the coastline without overlapping PetroCom's nearest water-based contours. Along with that goes a coverage gap that likely will result when the existing co-location agreement terminates and is not renewed.

For these reasons, the PetroCom/U.S. Cellular joint proposal is the best alternative for the Commission to adopt in this rule making. The joint proposal maximizes the incentives for parties to cooperate and co-locate facilities in the Gulf of Mexico, thus best serving the Commission's goal of preserving the status quo seamless coverage and service to the public.²

Sincerely,



Richard S. Myers

Attachments

cc (w/att): David Furth Roger Noel Michael Ferrante Linda Chang
Office of Advocacy, Small Business Administration

² It should be recalled that, under PetroCom's co-location agreements, land customers enjoy roaming rates comparable to land systems throughout the Gulf sector of the co-located facilities, and outside the Gulf sector are charged the same rate home subscribers are charged.



**EXTENSION AGREEMENT
BETWEEN
TEXAS #20 RURAL CELLULAR, INC.
AND
PETROLEUM COMMUNICATIONS, INC.**

By this document Texas #20 Rural Cellular, Inc. (hereafter "TX20") and Petroleum Communications, Inc. (hereafter "PETROCOM") enter into this agreement regarding service area contour extensions from TX20's proposed modification to the Rockport cell site in Texas RSA #20 into the Gulf of Mexico MSA. Specifically, PETROCOM consents to the 32 dBu contour extension from TX20's cell site operating under the following parameters:

Rockport Y-sector:

Lat. 28°-02'-0.6" N

Long. 097°-05'-26.4" W

GE - 9 ft AMSL

CAL - 282 ft AGL

Antenna - PD10222H-6

Azimuth - 120 degrees with 10 degrees downtilt

ERP (max) - 140 Watts ERP

The 32 dBu contours (calculated in accordance with Section 22.911 of the Commission's rules) resulting from the above engineering parameters defines the limits of the permitted extensions into Gulf of Mexico MSA (see attached scale maps and engineering parameters).

In consideration thereof, TX20 agrees to negotiate in good faith, at such time as may be necessary, to permit PETROCOM to place 32 dBu contour extensions into TX20 in order to equalize signal strength along the common border. TX20 further agrees that it will not unreasonably withhold its consent to such future extensions.

Each party reserves the right to make modifications within the extension areas provided that any modification made by any party shall not result in a 32 dBu contour extending beyond the initial extensions. In an effort to maintain or equalize the signal strength along the common borders in the referenced markets, the parties agree to coordinate with the other party prior to making any such modifications, which would affect the extension area governed by this agreement.



The parties hereto recognize that the extension rights conveyed hereunder constitute consent to the extension of service area boundaries as contemplated by Section 22.911 of the FCC's Rules and Regulations. This agreement is not intended to give the parties hereto protected coverage area within the other party's market. The parties retain all rights to provide service within their respective markets. The parties agree that this agreement may be filed with the FCC in order to document contractual consent for the extension of service area boundaries. If by grant of any application filed pursuant to this agreement the Commission should deem the extension areas governed by this agreement as CGSA rather than service area boundary extensions, this agreement shall become null and void with respect to the subject extensions.

The parties agree to coordinate frequency usage per the Commission's rules and to work together to eliminate any unacceptable interference resulting from the extensions. Also, the resulting extensions are not expected to cause interference within either carrier's market. However, if harmful interference should occur TX20 agrees to adjust the signal strengths at their cell site to eliminate the extensions causing the dispute upon sixty (60) days prior written notice by one to the other that the dispute has not been resolved to their satisfaction.

This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. It is specifically agreed that either party may transfer the rights acquired herein to a third party at its sole discretion, subject to any necessary FCC approvals.

This agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this agreement shall be binding unless executed in writing by all of the parties.

Should any provision of this agreement be determined to be invalid or unenforceable, it shall be deemed severed from this agreement, and such invalidity or unenforceability shall not affect the remaining provisions of this agreement, which shall remain in full force and effect.

Counterparts. This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

William R. Gill

Clarence A. Long

Date: 10-5-00

Date: 11-6-00

William R. Gill
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U.S. Cellular Corporation
Texas #20 Rural Cellular, Inc.

Authorized Representative
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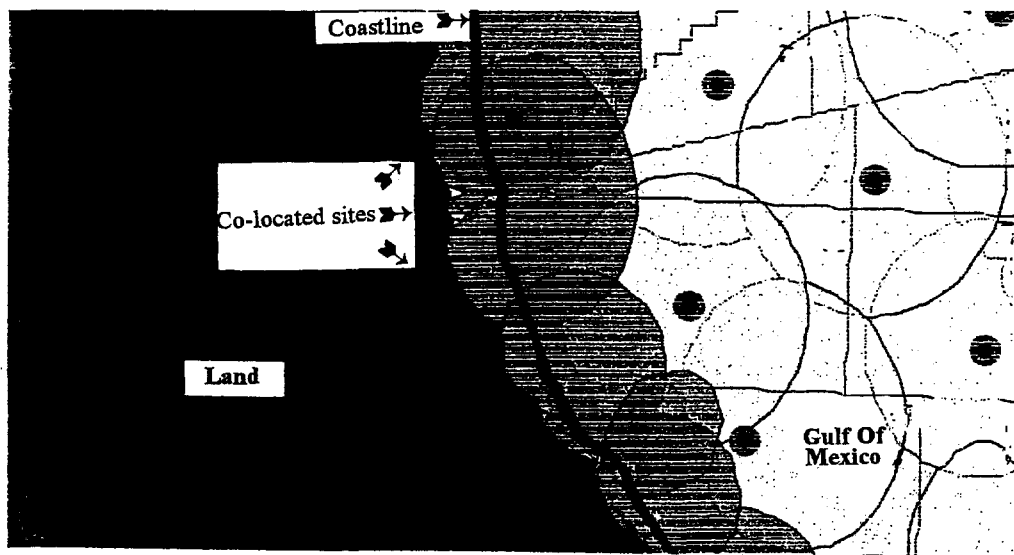


DIAGRAM 1

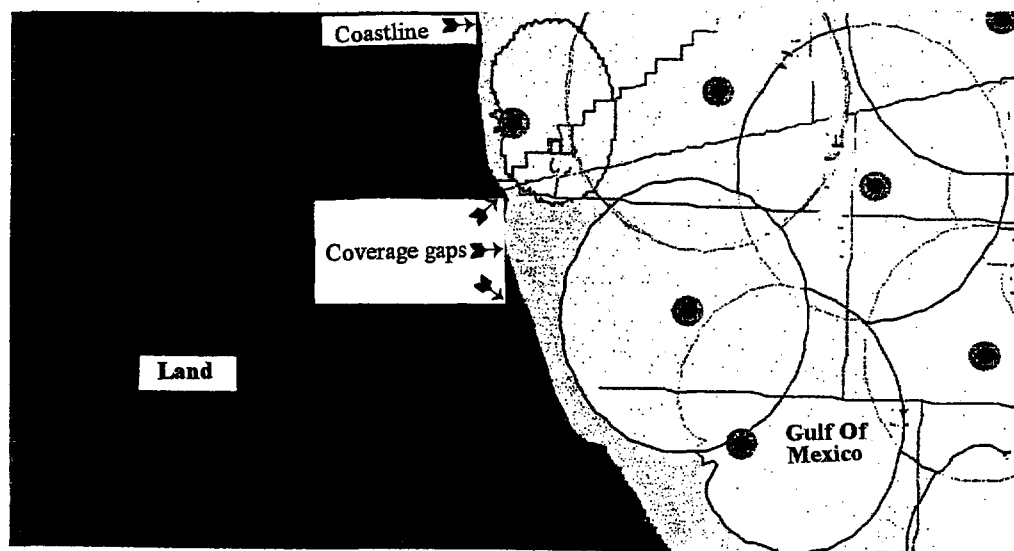


DIAGRAM 2